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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

J.D. DWAIN LUCAS,

Defendant and Appellant.

F071616

(Super. Ct. Nos. 1454017, 1454471,
1458227)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Ricardo Cordova, Judge.

Tara K. Hoveland, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Peña, J. and Smith, J.

In case No. 1454017, appellant J.D. Dwaine Lucas pled no contest to vehicle theft (count I/Veh. Code, § 10851, subd. (a)) and evading a peace officer (count III/Veh. Code, § 2800.2, subd. (a)), and he admitted a prior prison term enhancement (Pen. Code, § 667.5, subd. (b))¹ and allegations that he had a prior theft-related conviction within the meaning of section 666.5.² In case No. 1454471, Lucas pled no contest to vehicle theft (count II) and admitted allegations that he had a prior theft-related conviction within the meaning of section 666.5. In case No. 1458227, Lucas pled no contest to vehicle theft (count II) and admitted a prior prison term enhancement.

On appeal, Lucas contends the court erred in imposing a one-year prior prison term enhancement in case No. 1458227. We affirm.

FACTS³

On January 23, 2013, in case No 1454017, the Stanislaus County District Attorney filed a complaint charging Lucas with three felonies, vehicle theft (count I), receiving stolen property (count II/§ 496d, subd. (a)), and evading a peace officer (count III), and a misdemeanor count of resisting arrest (count IV/§ 148, subd. (a)(1)). The complaint also charged Lucas with two prior prison term enhancements and it alleged that he had two convictions within the meaning of section 666.5.

On April 17, 2013, in case No. 1458227, the district attorney filed a complaint charging Lucas and codefendant Shannon Wright with operating a chop shop (count I/Veh. Code, § 10801), vehicle theft (count II), and receiving a stolen vehicle (count III/§ 496d, subd. (a)). The complaint charged Lucas with three prior prison term

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

² Section 666.5 provides for a sentencing triad of two, three or four years for defendants convicted of vehicle theft and other enumerated offenses who have a prior conviction for vehicle theft or other enumerated offenses. (§ 666.5, subd. (a).)

³ The facts underlying the charges in the three cases in the instant appeal are omitted because they are not germane to the issue Lucas raises.

enhancements and with having four prior theft-related convictions within the meaning of section 666.5. It charged codefendant Wright with an additional count of vehicle theft (count II) and receiving stolen property (count IV/§ 496, subd. (a)), seven prior prison term enhancements, and with having seven prior theft-related convictions within the meaning of section 666.5.

On September 11, 2014, in case No. 1454471, the district attorney filed a one-count, first amended complaint charging Lucas with vehicle theft (count 1). The complaint also charged Lucas with two prior prison term enhancements and with having a prior theft-related conviction within the meaning of section 666.5.

On that date, Lucas entered into a plea bargain in the three cases that provided he would receive an aggregate, stipulated sentence of eight years eight months in exchange for his plea in the three cases. Pursuant to his negotiated plea in case No. 1454017, Lucas: (1) pled no contest to the vehicle theft charged in count I; (2) pled no contest to evading a peace officer as charged in count III; (3) admitted a prior theft-related conviction within the meaning of section 666.5; and (4) admitted a prior prison term enhancement. In case No. 1454471, Lucas pled no contest to vehicle theft as charged in the single count in that case and admitted a prior theft conviction within the meaning of section 666.5. In case No. 1458227, Lucas plead no contest to the vehicle theft charged in count II.

Lucas's plea bargain also provided that in case No. 1458227, he would admit having suffered a June 29, 2010, vehicle theft conviction in Stanislaus County within the meaning of section 666.5 and a prior prison term enhancement based on the prison term he allegedly served on an evading a peace officer conviction of that same date in Stanislaus County. These allegations were actually charged against Lucas's codefendant in case No. 1458227. Further, in taking Lucas's plea, the court neglected to take his admission of these convictions.

After dismissing three unrelated cases, the court sentenced Lucas pursuant to his plea bargain as follows: (1) the upper term of four years on Lucas's vehicle theft offense in count I of case No. 1454017; (2) an eight-month term on his evading a peace officer conviction in count III of that case (one third the middle term of two years); (3) a one-year prior prison term enhancement in that case; (4) a consecutive one-year term on the vehicle theft offense in count I of case No. 1454471 (one third the middle term of three years); and (4) a one-year term on the vehicle theft with a prior conviction in count II of case No. 1458227 (one third the middle term of three years).

However, before it imposed the one-year prior prison enhancement in case No. 1458227, the court noted that it may not have taken Lucas's admission of the prior prison term enhancement in that case. It then took Lucas's admission of convictions for vehicle theft and evading a peace officer on June 29, 2010, in Stanislaus County Superior Court that were the basis for a prior prison term enhancement charged against codefendant Wright in case No. 1458227. Afterwards, the court reimposed a one-year term on Lucas's vehicle theft conviction in case No. 1458227 and it added a one-year prior prison term enhancement in that case, for a total aggregate term of eight years eight months, in accord with Lucas's plea bargain.

After an unreported discussion, the court struck the admission "of the June 29th, 2010 prior" and took Lucas's admission of a December 2, 2005, vehicle theft conviction in Stanislaus County that was the basis for a prior prison term enhancement charged against codefendant Wright in case No. 1458227. It also reimposed the aggregate prison term of eight years eight months.

DISCUSSION

Lucas contends the court erred in imposing a prior prison term enhancement based on a conviction that was alleged to have been sustained by his codefendant in case No. 1458227. He further contends that because this constituted judicial error that resulted

from the trial court's exercise of discretion, the trial court may not correct this error and the enhancement must be stricken or the matter remanded for resentencing. We disagree.

Preliminarily we dispose of Lucas's contention that we must strike the enhancement at issue or remand for resentencing because, in imposing this enhancement, the trial court allegedly committed judicial error, which it may not correct. Judicial error is error that results from the exercise of judicial discretion. (*In re Candelario* (1970) 3 Cal.3d 702, 705.) Whether or not the trial court can correct such error is irrelevant because it may be corrected on appeal. (*Tokio Marine & Fire Ins. Corp. v. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 117.) Further, we reject Lucas's contention that the two remedies noted above are the only appellate remedies available in the instant case because Lucas does not cite any authority in support of this contention.

“ ‘[Moreover,] [w]here defendants have pleaded guilty in return for a *specified sentence*, appellate courts are not inclined to find error even though the trial court acts in excess of jurisdiction in reaching that figure, as long as the court does not lack *fundamental jurisdiction*. ... The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to “trifle with the courts” by attempting to better the bargain through the appellate process.’ [Citation.] ‘Where a court is merely acting in excess of its jurisdiction, the defendant who agrees to such actions may be estopped later from challenging the court’s actions on jurisdictional grounds.’ ” (*People v. Couch* (1996) 48 Cal.App.4th 1053, 1056-1057, accord *People v. Hester* (2000) 22 Cal.4th 290, 295.) “In its fundamental sense, ‘jurisdiction’ refers to a court’s power over persons and subject matter.” (*People v. Mower* (2002) 28 Cal.4th 457, 485, fn. 6.)

Lucas's plea bargain provided him a substantial benefit because it limited the sentence that could be imposed for the offenses and enhancements he pled to in the three cases and it provided for the dismissal of several other counts and enhancements in those cases and the dismissal of three unrelated cases. Further, since the court had fundamental jurisdiction over Lucas by virtue of the charges against him, the court acted only in excess of its jurisdiction in imposing a prior prison term enhancement based on the enhancement charged against codefendant Wright that Lucas admitted.

Lucas contends he should not be estopped from challenging the imposition of this enhancement because he seeks only to correct “his illegal sentence” through a remand for resentencing so he can be resentenced according to “his record alone.” Lucas is wrong.

Lucas asks this court to strike the one-year term imposed based on his admission of the enhancement charged against his codefendant or, alternatively, remand for resentencing. Striking the enhancement would result in Lucas’s bettering his deal through the appellate process because it would reduce his sentence by one year. Further, Lucas does not request remand so that he can admit one of the three prior prison term enhancements that were properly charged against him in case No. 1458227 in order to be lawfully sentenced within the parameters of his plea bargain. Instead, as an alternative disposition, he simply requests that the matter be remanded so that the trial court can resentence him. This would give him the opportunity to obtain a more lenient sentence if the trial court simply imposed the same sentence, less the one-year prior prison term enhancement at issue. Thus, either of the two remedies Lucas seeks amount to an attempt to better his bargain.

Lucas also contends the trial court trifled with him because it wrongfully entered his admission to a prior that was not charged against him and that he was not required to admit pursuant to his plea bargain. He further contends the prosecutor violated the plea bargain because he allowed him to plead to a prior prison term enhancement that was charged against a codefendant. We reject these contentions because neither one addresses the fact that Lucas received the sentence specified in his plea bargain, that he received a substantial benefit from the agreement, and that his appeal is no more than an attempt to better his bargain. Accordingly, we conclude that Lucas is estopped from challenging the one-year prior prison term the court imposed based on his admission of the enhancement charged against his codefendant in case No. 1458227.

DISPOSITION

The judgment is affirmed.